

February 9, 2022

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHERROD TEED VANDERHAGEN and WARE,

Plaintiffs,

-v-

Case No. 17-10164

VNA and LAN,

Defendants.

/

FINAL PRETRIAL CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

FEBRUARY 9, 2022

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*(Appearances Continued on Next Page)*

TO OBTAIN A  
CERTIFIED  
TRANSCRIPT:

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**FEDERAL OFFICIAL COURT REPORTER**  
**UNITED STATES DISTRICT COURT**  
**200 EAST LIBERTY STREET**  
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P R O C E E D I N G S

THE CLERK: Calling Sherrod Teed Vanderhagen and Ware  
v VNA and LAN.

THE COURT: Thank you. Welcome and please be seated.  
I'd like to introduce my intern Bahar Haste who is here with  
us today.

Does nobody wants to sit at counsel table? I mean,  
that's a first.

MR. CAMPBELL: Your Honor, is it okay if I sit here?

THE COURT: That would be great.

I'm just logging on to the docket in the event we  
need to look at anything there. I just want to take a moment  
to acknowledge the loss of one of our retired judges, Avern  
Cohn. I don't know how many of you had -- I see Ms. Bush  
nodding -- an opportunity to appear before Judge Cohn or get  
to know him. He was a remarkable person in every possible  
way. So we all miss him. Okay. Just a second.

Let me ask you this, ordinarily final pretrial  
conferences are conducted in chambers. We go through the  
final pretrial order. We discuss things that might need to be  
modified or changed. We do all of that. We discuss a lot of  
the things that we already talked about, jury selection and so  
on.

So do any of you -- well, I guess we should have  
appearances because we have some people who are here who have

1 not been in person here. Yeah, why don't we go ahead and have  
2 appearances for the record beginning with the plaintiffs.

3 MR. STERN: Your Honor, Corey Stern on behalf of the  
4 four plaintiffs.

5 MR. MAIMON: Moshe Maimon also on behalf of the  
6 plaintiffs, Your Honor.

7 THE COURT: And I guess what I'm going to do, we'll  
8 be going over all of this. But please remain seated and use  
9 the microphone. That way we're doing a little practice run  
10 with the Zoom Webinar today to make sure the combination of  
11 in-person and webinar is working.

12 MR. STEIN: Thank you. Good morning, your Honor.  
13 Daniel Stein for VNA.

14 THE COURT: Thank you.

15 MR. CHRISTIAN: Good morning, Your Honor. Marcus  
16 Christian on behalf of VNA.

17 THE COURT: Thank you.

18 MR. CAMPBELL: Good morning, your Honor. James  
19 Campbell. I also represent VNA.

20 THE COURT: Thank you.

21 MR. TER MOLEN: Good morning, Your Honor. Mark Ter  
22 Molen also on behalf of VNA.

23 MS. BUSH: And Cheryl Bush on behalf of VNA.

24 THE COURT: All right.

25 Mr. Mason, we were going to set up a microphone in

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1 that aisle. Is it set up? It's not yet. Okay. We will.

2 MR. MASON: Wayne Mason on behalf of LAN. And I'll  
3 just introduce our team.

4 THE COURT: Please do. That's good.

5 MR. MASON: You know Mr. Erickson.

6 THE COURT: Yep.

7 MR. MASON: You know Mr. Hickland, Jude Hickland.  
8 And this is Tory Finley who's just joined our firm and has  
9 filed a pro hac this morning, Your Honor.

10 THE COURT: Okay. What is your last name?

11 MR. MASON: Mr. Finley.

12 THE COURT: Okay. Is that everybody?

13 MS. DUPRE: Kristin Dupre for VNA defendants.

14 THE COURT: Okay. Thank you.

15 Well, I think the first thing I'm interested in  
16 knowing is whether you want this on the record or not. It's  
17 easy for me to say that. It can be done. We're here. We're  
18 on the record.

19 MR. STERN: We don't need it on the record, Your  
20 Honor.

21 THE COURT: Mr. Stein.

22 MR. STERN: We don't need it on the record.

23 MR. MASON: I think to the extent something comes up  
24 and we need something on the record, we can do that.  
25 Otherwise I'm fine with it.

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1 THE COURT: Okay. Why don't we get started then.  
2 And we're still run the webinar and make sure we've got the  
3 cameras. We're trying to not have the cameras focused on the  
4 jury box and make sure that we're picking up everybody who's  
5 speaking.

6 So we will be off the record. Thank you, Jeseca.  
7 Although we might go back on, so if you could stay here that  
8 will be great.

9 (Off the Record)

10 THE COURT: Let's go back on the record. We're at  
11 the final pretrial conference in the bellwether 1 cases. And  
12 Mr. Stern has an oral motion to seal Exhibit C to his recent  
13 motion to reconsider the Court's decision on LAN's motion for  
14 summary judgment.

15 Do you want to make that motion, Mr. Stern?

16 MR. STERN: Yes, Your Honor.

17 On behalf of the bellwether plaintiffs identified in  
18 the Walters's caption case, I hereby move to have admitted  
19 under seal Exhibit C to plaintiffs' previously filed motion  
20 for partial reconsideration of the Court's summary judgment  
21 order regarding the LAN defendants, which was filed earlier  
22 this morning.

23 THE COURT: And the reason that Exhibit C would be  
24 sealed is that it's a transcript that was taken at a criminal  
25 proceeding regarding the deponent. Is that right?

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1 MR. STERN: I apologize, Your Honor.

2 The purpose of the request is because it is a  
3 transcript that was taken, testimony under oath, but in a  
4 proceeding outside of the civil proceeding as a witness to  
5 potential criminal acts undertaken by the Attorney General  
6 office years ago.

7 THE COURT: Okay. And at this point I will grant the  
8 motion. I'll certainly take a look at the transcript and  
9 determine if it needs to continue to be sealed. But I think  
10 out of an abundance of caution for the rights of those who are  
11 criminally charged in connection with the Flint Water Crisis,  
12 it should be sealed at this time.

13 MR. STERN: And I just want to note for the record,  
14 Your Honor, that we are actually filing the relevant excerpts  
15 that are cited in the brief. We are not filing the entire  
16 transcript at this point.

17 THE COURT: Oh.

18 MR. STERN: Unless the Court determines that it would  
19 be helpful to have.

20 THE COURT: I'll let you know if we need the entire  
21 transcript and that may make it easier to unseal if those  
22 portions do not meet the standards set forth by the Sixth  
23 Circuit in Blue Cross v Shane Group.

24 So now we're going to, while we're still on the  
25 record, list out the jurors that all three parties --



1 plaintiffs, LAN, and VNA -- agree should be stricken for  
2 hardship issues that were raised in the jury questionnaires.

3 And so what I'm asking for is the smallest list. So  
4 if there's any that are disputed, I just want the ones that  
5 everyone can agree on.

6 Do you need to conference first?

7 MR. STERN: I think it would be fine if Mr. Mason  
8 read his list. Because he has 22 and I've only counted 20.  
9 And so I'll be able to pick up potentially the two that he  
10 believes are in agreement of the three parties and we can  
11 potentially go there.

12 THE COURT: Okay. Can Mr. Mason just come to a  
13 microphone.

14 MR. MASON: I worked off of the plaintiffs' list.  
15 And here's what I had. Juror number 27B. Juror number 34B.  
16 35B. 38B. 46B. 54B. 62B. 63B. 72B. 98B. 124B. 141B.  
17 159B. 164B. 169B.

18 MR. STERN: On 169B, Your Honor, we don't have that  
19 as a hardship that VNA identified, but perhaps I'm wrong.

20 THE COURT: Okay. We'll hold that one off right now  
21 to the side.

22 MR. MASON: I think counsel may be right, Your Honor.  
23 Let me double check. All right. I'll continue. 182B. 190B.  
24 199B. 223B. 254B. 260B. And 277B.

25 MR. STERN: I don't know which one of us counted

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1 wrong here. But those are all the same that we have except  
2 for 169B.

3 THE COURT: Okay.

4 MR. MASON: And I have VNA's list here that I've  
5 printed. And I believe Mr. Stern is correct. So what I read  
6 I think is accurate with the exception of 169B, unless VNA  
7 wants to agree now.

8 MR. STEIN: No. I think that's correct. We didn't  
9 have 169B on our list. And so I think we --

10 THE COURT: Okay. I'll take a look at 169B before  
11 submitting these to the jury department.

12 And I'll take a look at -- I have not read all of  
13 them, remember, the deposition transcripts. I've read a good  
14 handful of them. So I'll just do some randomized checking and  
15 then we'll submit these strikes along with the ones previously  
16 submitted from the original group in the A group. Okay.

17 Is there anything further?

18 MR. STERN: So Your Honor will inform the jury  
19 department of who's being excused and then we will also get  
20 notification of all those that are being excused?

21 THE COURT: Everybody that you've submitted will be  
22 excused. I'll take a look at 169B.

23 MR. STERN: Okay.

24 THE COURT: And I'll just -- just for my own  
25 conscious, I'll check these. I will let you know if I

1 disagree with any of them.

2 MR. STERN: Okay.

3 THE COURT: And I'm likely not to, but I'll let you  
4 know. So assume that all of these will be submitted except  
5 for 169B. I'll let you know about that one. And if any  
6 others come off, I'll let you know.

7 Then as soon as the jury department has a list of the  
8 first 35, I will do what I can to provide that list to you. I  
9 don't know what order they'll be seated until the morning when  
10 that randomized list of the first 35 is created. I'll also  
11 give you the seating chart when I have it just so that you  
12 have that available to you.

13 Anything further?

14 MR. STEIN: The we had a couple of issues we wanted  
15 to raise.

16 THE COURT: That's, Mr. Stein?

17 MR. STEIN: Yes.

18 THE COURT: I don't know if it's helpful to Jeseca,  
19 but with the masks, until I'm totally tuned in to who's  
20 speaking, if you just sort of put your hand up slightly, it's  
21 good -- then I know who's speaking.

22 MR. STEIN: So just in terms of a logistical issue,  
23 we were curious if the parties would agree to share in advance  
24 the witnesses they plan to call over the next couple of trial  
25 days so we can plan which --

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1 MR. MAIMON: I'll touch base. Mr. Mason and I had  
2 discussed that preliminarily and we'll come to an agreed upon  
3 protocol for that.

4 MR. STEIN: Okay. And similarly in terms of  
5 demonstratives for opening statement, I think would make sense  
6 for us to exchange them sometimes in advance so we can see if  
7 there's an objection.

8 THE COURT: We're still on the record. Do you want  
9 this on the record?

10 MR. STEIN: This does not need to be on the record.

11 THE COURT: Okay. So we'll be off the record and we  
12 will have concluded the final pretrial conference.

13 (Proceedings Concluded)

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16 CERTIFICATE OF OFFICIAL COURT REPORTER

17 I, Jeseca C. Eddington, Federal Official Court  
18 Reporter, do hereby certify the foregoing 12 pages are a true  
19 and correct transcript of the above entitled proceedings.

20 /s/ JESECA C. EDDINGTON  
21 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

4/29/2022  
Date

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